IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1134 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMAD IDRISH ALLARAKHA NAGORI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1134 of 2003

MR BP GUPTA for Petitioner No. 1

MR PAURAMI SHETH Ld. APP for Respondents

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. Heard Mr.B.P.Gupta, learned advocate for the petitioner and Ms.Paurami Sheth, learned APP for the

respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 7.3.2003 (Annexure-C) passed by respondent no.2 externing the petitioner from the area under the jurisdiction of Police Commissioner, Ahmedabad City and other contiguous districts of Gandhinagar, Mahesana, Kheda and Ahmedabd Rural, and order dated 18.10.2003 (Annexure-E) passed by respondent no.3 and prays for setting aside of the said orders.

3. It may be noted at the outset that by order at Annexure-C, the petitioner was externed by respondent no.2 from the area under the jurisdiction of Police Commissioner for the city of Ahmedabad and contiguous districts of Gandhinagar, Mahesana, Kheda and Ahmedabad Rural. The petitioner preferred appeal under Section 60 of the Bombay Police Act before respondent no.3 and the said appeal came to be allowed partly to the extent that the order requiring the externment of the petitioner from the contiguous districts of Ahmedabad Rural, Gandhinagar, Kheda and Mahesana was quashed and set aside and the externment of the petitioner was restricted only to the area falling within the jurisdiction of the Police Commissioner for the city of Ahmedabad.

4. It is the say of the respondents that the petitioner is a dangerous person inasmuch as the petitioner is a head strong person and has been harassing the pedestrians and the innocent businessmen by threatening them with deadly weapons administering threat to kill them. That the petitioner has been taking the hired vehicle but, has not been paying fare for taking the hired vehicle, and has been beating the drivers of the vehicle and has also been committing robbery. That the petitioner has been indulging in such illegal acts in Mirzapur, Dilhi Chakla, Dilhi Darwaja, Shahpur, Nagoriwad, Kureshi Chowk and the other adjacent areas in the city of Ahmedabad.

On these allegations, the petitioner was served with show cause notice followed by the impugned externment order (Annexure-C) modified in appeal vide Annexure-E.

5. It has been submitted by Mr.B.P.Gupta, learned advocate for the petitioner that the show cause notice dated 22.7.2002 (Annexure-A) has been issued by the Assistant Police Commissioner, "C" Division, Ahmedabad

city resorting to Section 56(B) of the Bombay Police Act. It is further contended that according to the show cause notice, the subjective satisfaction reached by the concerned authority is only with regard to the alleged victims of the petitioner and there is no subjective satisfaction reached by the authority concerned as regards the other persons i.e. the persons other than the victims of the petitioner in the area in which the petitioner is said to have indulged in illegal / criminal activities.

6. Reliance has been placed on the decision rendered in Special Criminal Application No.1303 of 1992 by the Division Bench of this Court, copy whereof has been placed on record. In Para.2 of the said judgment while dealing with the case of externment under Section 56 of the Bombay Police Act, the Division Bench observed, "In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their persons or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our view by the unreported judgment of this Court in Special Criminal Application No.18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at Page-1474 Para.5."

In the instant case, the statements of the victims of the petitioner have been recorded and the subjective satisfaction reached by the authority concerned is with regard to the victims of the petitioner. It is not suggested from the material on record that the statement of other persons i.e. persons other than the victims of the petitioner in the incident, have been recorded. Thus, there is no subjective satisfaction reached by the authority concerned as

regards the other persons.

7. Following the principle laid down in Special Criminal Application No.1303 of 1992 (supra), the mandatory requirement of Section 56 of the Act contemplates the subjective satisfaction required to be reached with regard to the victims as well as the other persons, and this mandatory requirements contemplated by Section 56(B) of the Bombay Police Act having not been satisfied in the instant case, the impugned order of externment (Annexure-C) and as modified in the appeal vide (Annexure-E) are liable to be quashed and set aside.

7. In the result, the petition is granted and accordingly allowed. The impugned order of externment dated 7.3.2003 (Annexure-C) passed by respondent no.2 and the impugned order dated 18.10.2003 (Annexure-E) passed by respondent no.3 are hereby quashed and set aside. Rule made absolute. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)